



May 19, 2000

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-2008

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135420.

The City of Houston (the "city") received a request for information regarding the status of the city's contractual relationships concerning the construction of passenger boarding bridges at Bush Intercontinental Airport. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation has been pending or reasonably anticipated since the date of receipt of the request, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990); Gov't Code § 552.103. The governmental body must meet both prongs of this test for information to be excepted under section 552.103.

You explain that the city is involved in a breach of contract dispute with its contractor for the supply of airport passenger loading bridges for Bush International Airport. Currently, the city and this contractor are attempting to negotiate a settlement. You indicate that the city anticipates litigation over this matter should the current negotiations fail. Moreover, you have shown that the city attorney has approved the city's proceeding to litigation. Based on

your representations, and our review of the documents at issue, we find that you have sufficiently shown that litigation involving the city has been reasonably anticipated at least since the time that the city received the request for information. Furthermore, we agree that the submitted documents pertain to the anticipated litigation.¹ Therefore, the city may withhold most of the documents submitted as Exhibits 4 and 5 under section 552.103.

However, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no interest under section 552.103 exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We note that several of the submitted documents appear to have been seen by the opposing parties in this case. Such documents may not be withheld under section 552.103. We also note that the applicability of section 552.103 ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

¹We note that in your letter to this office in which you provide arguments for withholding the submitted documents, you seem to argue that only Exhibit 4 is excepted under section 552.103. However, the cover sheet to Exhibit 5 indicates that your argument concerning section 552.103 applies to Exhibit 5 as well. Due to the note on the cover sheet, and because the documents in Exhibit 5 pertain to the same subject matter as those in Exhibit 4, we understand you to raise section 552.103 in regard to both Exhibits 4 and 5.

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 135420

Encl: Submitted documents

cc: Mr. William R. Pakalka
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(w/o enclosures)